Supreme Court, U. S.
FILED
FEB 5 1976
MICHAEL RODAK, JR., CLERK

No. 75-306

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

MICHAEL C. McCRARY, ETC., ET AL.,

AND

COLIN M. GONZALES, ETC., ET AL.,

Petitioners,

V.

RUSSELL L. RUNYON, KATHERYNE E. RUNYON, D/B/A BOBBE'S PRIVATE SCHOOL,

AND

FAIRFAX-BREWSTER SCHOOL, INC.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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REPLY BRIEF FOR RUSSELL L. RUNYON, ETC., d/b/a BOBBE'S PRIVATE SCHOOL

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INTRODUCTION

This reply brief is intended to be a concise response to the two questions presented by petitioners regarding the award of attorney's fees and the applicability of Virginia's two year statute of limitations, respecting an action brought under 42 U.S.C. § 1981.

ARGUMENT

As a general proposition, the award of attorney's fees has been frowned upon by the courts, and for good reason. A change from this rule would result in flooding the courts with all sorts of spurious litigation.

There was absolutely no finding by the district court that Bobbe's School was acting in bad faith or displaying "obstinate obduracy." Nor was there any finding that any witness for Bobbe's committed prejury, nor is there any basis for it.

It should be pointed out that this suit involves a novel approach to reach a purely private area, and absorb it in the amorphous mass of personal vindication.

Congress did not see fit to provide for the award of attorney's fees in § 1981 actions, thus leading to the obvious conclusion it did not intend that fees be awarded.

The Fourth Circuit Court of Appeals reversed the award of attorney's fees in this case, on sound legal principle. (See *Runyon, et als,* v. *McCrary, et als,* 515 F.(2d) 1083. See also *Bradley* v. *School Board of City of Richmond, Va.,* 345 F.(2d) 321, CCA-4; *Brewer* v. *School Board of City of Norfolk, Va.,* 456 F.(2d) 943, CCA-4.)

APPLICATION OF TWO YEAR STATUTE OF LIMITATIONS WAS PROPER

The Fourth Circuit Court of Appeals has considered the question of the applicable provisions of the Virginia Code § 8-24. And it decided that the claim was certainly not one based on a contract but rather that

a § 1981 damage claim is referable to injured feelings and humiliation. (See p. 41 of Joint Appendix.)

There the court cited *Allen* v. *Gifford,* 462 F.(2d) 615, and *Almond* v. *Kent,* 459 F.(2d) 200, which is sound law. Absent any congressional enactment on this point, then state law is controlling. (*O'Sullivan* v. *Felix,* 233 U.S. 318, 34 S.Ct. 596, 58 L.Ed. 980.)

CONCLUSION

It is submitted that the application of the two year statute of limitations, and the denial of attorneys' fees, was correct.

Respectfully submitted,

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